

CALENDAR ITEM

C74

A 10

08/19/15

W 26876

J. Rader

S 2

L. Calvo

**CONSIDER ACCEPTANCE OF A DONATION BY THE MARIN AUDUBON SOCIETY
OF A COMMON LAW PUBLIC TRUST EASEMENT INVOLVING ASSESSOR
PARCEL NUMBERS 023-040-06, 023-040-10, AND 023-040-11 IN THE CITY OF
CORTE MADERA, MARIN COUNTY AND EXERCISE OF SAID EASEMENT BY THE
CALIFORNIA STATE LANDS COMMISSION FOR THE RESTORATION OF
WETLANDS AND WILDLIFE HABITAT AND PUBLIC ACCESS AT CERTAIN
UPLAND AREAS OF THE SUBJECT PROPERTY**

PARTIES:

GRANTOR:

Marin Audubon Society
P.O. Box 599
Mill Valley, CA 94942-0599

GRANTEE:

California State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, CA 95825-8202

INTRODUCTION:

The recommended action is the acceptance and exercise of a Public Trust Easement on the whole of an approximately 5.16-acre property (the property), in order to avoid potential incompatible use with a planned tideland marsh restoration project and an existing Public Access Easement on the perimeter of the property. The project has obtained funding including \$400,000 from the State Coastal Conservancy (Conservancy) and \$100,000 from Marin County, in addition to private donations.

BACKGROUND:

In the early 1980s, a title dispute arose concerning a property in Corte Madera (Assessor's Parcel Numbers 023-040-06, 023-040-10, and 023-040-11) that was within a filled portion of Rancho Corte Madera del Presidio. The owner, Frank P. Greene (Greene), planned to develop the property as an office complex and claimed that the property was free of any state interest. The California Supreme Court case *Valentine v. Sloss* (1894) 103 Cal. 215 confirmed the ownership of

CALENDAR ITEM NO. **C74** (CONT'D)

fee title of the property had passed into private ownership. The California State Lands Commission (Commission) asserted that patented rancho lands included historic tidelands and that a sovereign public trust interest still existed in the property. The development plan required a permit from the Bay Conservation and Development Commission (BCDC), which required Greene to dedicate a public access/open space area on the property.

In settlement of the title dispute, the Commission authorized the execution of SLL 79 (W 22513) on September 29, 1981. As part of SLL 79, the state, acting by and through the Commission, obtained a "Public Access Easement" around the perimeter of the property for "non-motorized public access as specified by the Bay Conservation and Development Commission."

These events occurred before the U.S. Supreme Court decision in *Summa Corp. v. California ex. rel. State Lands Commission* (1984) 466 U.S. 198 held that the state was prohibited from asserting any ownership claims, such as the one made by the Commission on the property, to lands inside the boundary of a confirmed rancho patent. The effect of the *Summa* decision on the Greene property was to clarify that the land had not ever been sovereign land of the state. However, because the conveyance of the Public Access Easement occurred as part of a settlement, the Public Access Easement was unaffected by the *Summa* decision and remains in place to this day. Greene did not pursue development of the site, years passed, and the permit requiring the Public Access Easement lapsed.

CURRENT SITUATION:

The property is bordered by a railroad right-of-way, located adjacent to a roadway, owned by Sonoma-Marín Area Rail Transit (SMART), and is surrounded on three sides (north, east, and south) by the Corte Madera Marsh Ecological Reserve. The presence of the railroad right-of-way means that the public currently has no lawful public access to the Public Access Easement. The property is being acquired by the Marin Audubon Society (MAS) to perform a complete tidal marsh habitat restoration integrated with the Reserve. As a condition of Conservancy approval, MAS is required to:

- obtain rights from SMART to access the site for purposes of the acquisition; and
- dedicate the property for the purposes of habitat restoration and preservation, while enabling compatible public access.

MAS is currently negotiating with SMART to obtain rights to access the site for purposes of the restoration. In addition, Marin County is leading the North/South Greenway Gap Closure Project in conjunction with the Transportation Authority of Marin, City of Larkspur, and the Town of Corte Madera to construct a bicycle

CALENDAR ITEM NO. **C74** (CONT'D)

and pedestrian pathway in the railroad right-of-way as part of the Bay Trail alignment.

In preliminary discussions, MAS has represented that there will be public access to the restoration project. However, it is not possible to undertake the restoration and maintain all of the public access at the location of the current Public Access Easement because the project will cut a tidal channel to reconnect the property to tidal influence and restore some filled areas of the property to their original state as tidal marsh. This means that the restoration could be a potential incompatible use with the existing Public Access Easement on the perimeter of the property.

MAS plans to provide a public access trail along the edge of the property where the public can view the marsh and wildlife that use it without impacting those resources. MAS has proposed donating a Public Trust Easement to the State Lands Commission on the entire property. By operation of law, the Commission's acceptance and exercise of this donated common law Public Trust Easement for the express purposes of allowing the construction and operation of the wetlands and wildlife habitat restoration project (and public access in upland areas of the property) will terminate the existing Public Access Easement on the perimeter of the property, eliminating the potential incompatible use with the existing Public Access Easement on the perimeter of the property.

After completing the restoration, MAS will donate the fee title to the California Department of Fish and Wildlife (CDFW) to be added to the Corte Madera Marsh Ecological Reserve.

OTHER PERTINENT INFORMATION:

1. MAS is in contract to purchase the property, expected to close on August 29, 2015. Donation of the Public Trust Easement is contingent upon MAS completing the purchase of the property.
2. In addition to providing habitat for wildlife, the restored property will reestablish a tidal connection and create a permeable wetland "buffer" area that would contribute to sea-level rise preparedness and adaptation.
3. Upon the Commission's approval of the recommended action, staff will continue its consultation with the Conservancy and CDFW to ensure that the easement language is not inconsistent with the Conservancy's and CDFW's requirements.
4. The staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 25, Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical

CALENDAR ITEM NO. **C74** (CONT'D)

Resources; California Code of Regulations, Title 14, section 15325, subdivision (c).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300.

EXHIBITS:

A.1-A.3 Subject Maps

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that this activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 25, Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources; California Code of Regulations, Title 14, section 15325, subdivision (c).

AUTHORIZATION:

1. Authorize the Executive Officer to accept the donation of the common law Public Trust Easement by MAS involving Assessor Parcel Numbers 023-040-06, 023-040-10, and 023-040-11 in the City of Corte Madera, Marin County.
2. Exercise the common law Public Trust Easement for the primary purposes of restoration of the wetlands and wildlife habitat and public access in upland areas of the subject property.
3. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the acceptance and exercise of the common law Public Trust Easement; and to appear on behalf of the Commission in any legal proceedings relating to this matter.

Exhibit A: Subject Maps
Exhibit A-1





